IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3927 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

CHHAGANBHAI D JAMBU

Appearance:

1. Special Civil Application No. 3927 of 1988

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 04/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the award dated 15th March, 1998 passed by the Labour Court, Surat by which the action of the petitioner,

Gujarat State Road Transport Corporation, in dismissing the respondent from service was set aside and the punishment was substituted by ordering withholding of increments of the respondent for a period of two years without future effect. It was also directed that the respondent will not be entitled to backwages for the intervening period.

2. The short facts leading to the present petition are that the respondent who was engaged as a Conductor by the petitioner Corporation was alleged to have been found to be carrying ticketless passengers though fare was collected from them on 16.4.85. For the said misconduct, a chargesheet came to be issued by the petitioner on 23rd April 1984. Pursuant to the departmental inquiry conducted, the Disciplinary Authority awarded the penalty of dismissal from service which the respondent challenged before the appellate and revisional authorities. Having failed before both the authorities, the respondent approached the Labour Court, Surat by filing Reference (LCS) No.88/86. The Labour Court considered the defence of the respondent plausible that the respondent did not have sufficient time to issue tickets to all passengers since according to him, the bus was checked barely two kilometers from the starting point. The Labour Court, therefore, decided to ignore the past defaults and exercised powers under section 11-A of the Industrial Disputes Act and opined that the ends of justice would be served if the order of dismissal is set aside and is substituted by the penalty of withholding of two increments without future effect, however, directed that the reinstatement may be carried out without backwages.

3. The petitioner has challenged the said order of the Labour Court and contended through its learned counsel that the Labour Court has grossly erred in setting aside the order of penalty when the charges were proved against the respondent. It is pointed that the default card of the respondent was produced before the Labour Court in which as many as 50 different defaults were recorded.

4. Appearing for the respondent-workman, learned advocate Shri Rathod has submitted that the charge was wrongly held to have been proved by the petitioner and the Labour Court was justified in setting aside the findings since the respondent did not have sufficient time to issue tickets and it is not the case of misappropriation of funds.

5. Upon perusal of the award of the Labour Court, it

is evident that the Labour Court has interfered with the findings of the facts arrived at by the petitioner without any basis whatsoever. It was of course the stand of the respondent that the bus was checked barely 2 k.m. from the starting point which in turn did not permit sufficient time to him to issue tickets. This assertion, however, had to be borne out from the record. The Labour Court, only observed that the said defence of the workman is to some extent believable. This was not sufficient to upturn the finding arrived at by the domestic tribunal. It is now well settled that the Court or the Tribunal cannot interfere with the findings of fact arrived at during the course of the inquiry unless the findings are utterly perverse in the sense that they are not supported by any evidence on record. It is also held in number of decisions that the sufficiency or reliability of the evidence is not within the realm of Court's jurisdiction (See AIR 1989 SC 1185). I, therefore, find that the Labour Court gravely erred in interfering with the findings arrived at by the petitioner pursuant to a validly conducted departmental inquiry. Since the respondent had not challenged the validity of the departmental inquiry, it was not open for the Labour Court to interfere with the findings of fact unless the findings were perverse.

6. The Labour Court has brushed aside the past record of the respondent which was smeared by number of minor and major defaults. Besides other smaller misconducts, the respondent had also carried passengers without issuing tickets, of course also without collecting fare on not less than 20 occasions. On one more occasion in the past also, the respondent had carried ticketless passengers, but was let off with minor punishment.

7. In view of this discussion, I find that the Labour Court was not justified in interfering with the decision of the petitioner. In fact, the reporter has stated that the passengers were checked when the bus had arrived at Hasot Bus stop and when the passengers were getting down from the bus. If this be the case, the theory of the respondent that he did not have sufficient time to issue tickets cannot be believed. On the question of quantum of penalty also, it is by now well settled that the Court or the Tribunal cannot interfere with the quantum of punishment imposed by the employer unless the penalty shocks the conscience of the Court (See AIR 1996 SC 484).

8. The learned advocate for the respondent has

submitted that the petitioner had reinstated the respondent and the respondent is working since 1988. He, therefore, submits that the order of dismissal may be substituted by any other lesser punishment. In order to examine this contention, I had called for the subsequent default card of the respondent, which the learned advocate for the petitioner has made available to the Court as well as to the counsel for the respondent. Subsequent to his reinstatement in service also, there are number of defaults proved against the respondent. In that view of the matter, it would not be possible for this Court to recommend to the petitioner to consider reviewing of the penalty imposed on the respondent. It would only be upto the petitioner to consider the effect of subsequent service of the respondent and his service record thereafter. This Court cannot convert itself into a Disciplinary Authority and consider the appropriate punishment to be awarded to the respondent. However, it will be open to the respondent to make a representation to the petitioner for converting the order of dismissal into one of compulsory retirement. It will be open for the petitioner to consider the same in accordance with law.

9. In the result, the petition succeeds. The impugned order of the Labour Court is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)